

Serial No.: 09/274,797

Attorney's Docket No.: 10559/237001/P8886

REMARKS

Claims 37-54 are pending, with claims 37, 45, and 51 being independent. Reconsideration and allowance are respectfully requested in view of the following remarks.

Withdrawal of the prior 112 rejection of claim 41 is acknowledged and appreciated.

Claims 37-54 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Lauer (US Patent 5,528,591). This contention is respectfully traversed.

The art of record fails to teach or suggest all the claim limitations, and a prima facie case of obviousness has not been established. First, the office action fails to address or consider what Lauer explicitly teaches about the differences between credit information and data rate information in network communications. The Background section of Lauer states, "The source then interprets the credit as an indication of the amount of data that it can transmit into the network without any data loss due to congestion or buffer overflow. Note that data rate is not controlled, but the number of cells transmitted is controlled." (See col. 2, lines 5-11; emphasis added.) In view of Lauer's own teaching on the distinction between credit information and data rate information, reconsideration of the current use of Lauer is respectfully requested. Determination

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of a "credit number" in a credit control approach to network communications, as described in Lauer, should not anticipate determination of "rate-based, flow-control data", as claimed.

Second, the office action fails to address or consider the distinct differences between the timing and interrelation of the processing operations of Lauer and those of the present claims. The office action asserts that Lauer teaches determining flow control data in response to receipt of a forward resource management control cell. Reconsideration of this contention is respectfully requested.

Lauer describes only two ways of determining the credit number: either "periodically" (see col. 8, lines 38-41) or in response to receipt of a resource management cell from the immediate downstream neighbor (see col. 7, lines 21-27; col. 7, lines 61-65). Under the periodic approach, there is no interrelation between determining the credit number for a particular control cell and receipt of that particular control cell, as would be required for any suggestion of the claimed subject matter.

Lauer's other described approach, determines the credit number in response to receipt of a resource management cell from the immediate downstream neighbor, which clearly means in response to receipt of a backward resource management control cell. Thus, under this second Lauer approach, determining the

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credit number is not done in response to receipt of a forward resource management control cell, after forwarding of that forward resource management control cell. Nor does Lauer teach modifying in the network switch the received backward resource management control cell, before forwarding the backward resource management control cell to the source node, based on the rate-based, flow-control data determined in response to the receipt of the forward resource management control cell. Thus, Lauer fails to teach or suggest the unique timing and interrelation of the claimed operations of a network switch.

Third, the official action acknowledges that Lauer does not disclose determining the flow control data in the network switch after forwarding the forward resource management (FRM) cell. But the office action then goes on to state that such is the case in a "conventional system". The office action alleges that, "It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the flow control data in the network switch after forwarding FRM cell to the next switch node in order to reduce round trip delay of the RM cell." Thus, the office action appears to assert that the novelty of the present invention is defeated because of the advantage it provides. This contention is improper hindsight analysis and cannot be supported by the record.

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Attention is called to In re Lee, 277 F.3d 1338 (Fed. Cir. 2002), in which the Federal Circuit vacated a Patent Office Board affirmance of an obviousness rejection because, rather than relying on objective evidence, the Patent Office based its obviousness rejection on conclusory statements having no evidentiary support in the record. Id. at 1342-43. In doing so, the Federal Circuit made it abundantly clear that "subjective belief and unknown authority" and "[assertions of] common knowledge and common sense" are not "a substitute for evidence." Id. at 1343-44.

In view of the clear differences between Lauer and the claimed subject matter, the legal standard for properly establishing an obviousness rejection, and the office action's acknowledgement of one of the advantages of the present subject matter, withdrawal of the rejection under 35 U.S.C. 103(a) is respectfully requested. Independent claims 37, 45, and 51 should be in condition for allowance. Dependent claims 38-44, 46-50, and 52-54 are patentable for the reasons presented above, and on their own merits.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific issue or comment does not signify agreement with or concession of that issue or comment. Because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all

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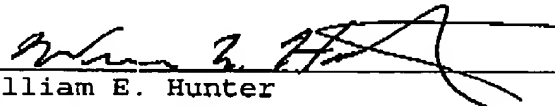
pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

It is respectfully suggested for all of these reasons, that the current rejection is totally overcome; that none of the cited art teaches or suggests the features which are claimed, and therefore that all of these claims should be in condition for allowance. A formal notice of allowance is thus respectfully requested.

Please apply any necessary charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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William E. Hunter  
Reg. No. 47,671  
Attorney for Intel Corporation

Fish & Richardson P.C.  
PTO Customer Number: 20985  
12390 El Camino Real  
San Diego, CA 92130  
Telephone: (858) 678-5070  
Facsimile: (858) 678-5099  
10506046.doc